

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by Verizon	)	
New England Inc.,	)	
Verizon Delaware Inc.,	)	
Bell Atlantic Communications, Inc.	)	
(d/b/a Verizon Long Distance),	)	
NYNEX Long Distance Company	)	WC Docket No. 02-157
(d/b/a/ Verizon Enterprise	)	
Solutions), Verizon Global Networks)	)	
Inc., and Verizon Select Services	)	
Inc., for Authorization to Provide	)	
In-Region, InterLATA Services	)	
in New Hampshire and Delaware	)	

**Consultative Comments of the  
New Hampshire Public Utilities Commission on  
Verizon New Hampshire's Compliance with Section 271  
of the Telecommunications Act of 1996**

**July 17, 2002**

**I. Introduction and Summary**

Pursuant to 47 U.S.C. Section 271, Verizon New England, Inc. d/b/a Verizon New Hampshire (Verizon NH) applied on June 27, 2002, to the Federal Communications Commission (FCC) for authorization to provide in-region, interLATA Service in the State of New Hampshire (Verizon NH 271 Application). In its Public Notice, DA 02-1497, the FCC requested comments on the Verizon NH Section 271 Application. These comments (Consultative Comments) from

the New Hampshire Public Utilities Commission (NHPUC) are meant to fulfill the consultation required under 47 U.S.C. Section 271(d)(2)(B).

The Consultative Comments verify the conclusion, reached in NHPUC Docket No. DT 01-151 to the effect that Verizon NH complies with the requirements of Section 271(c). Based on the record before us, including Verizon's agreements made in its letter of June 5, 2002,<sup>1</sup> we recommend that the FCC approve Verizon NH's application, subject to the following conditions which were set forth in a letter to Verizon NH dated June 14, 2002.<sup>2</sup>

Conditions:

\*\*Convert the existing SGAT into a CLEC tariff, from which competitors may directly order anything contained in the SGAT without the need to negotiate an interconnection agreement or amend an interconnection agreement, reflecting the SGAT rates, terms and conditions as further modified in the following two conditions;

\*\*Reduce rural loop rates, switching rates, DS-1 loop rates and Daily Usage Feed (DUF) rates, as detailed on p. 16 herein;

\*\*Revise the SGAT and the CLEC tariff to clarify that UNE-P combinations ordinarily combined by Verizon NH to serve retail customers will be provided, as they are in Massachusetts, even if the particular loop and switch port affected by the CLEC's order are not currently connected and have never been connected to each other before;

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<sup>1</sup> Attached hereto as Appendix 1.

<sup>2</sup> Attached hereto as Appendix 2.

**\*\*Conduct a trial offering of ISDN BRI service in at least six exchanges, at flat monthly rates of \$30 and \$50 for residential and business service respectively, as further detailed at p. 17 herein;**

**\*\*Create a "critical-need" customer category (e.g. police, fire, hospital) that identifies end-user customers whose continued telephone service is essential to public health and safety so that, if the critical-need customer chooses to change local exchange carriers, Verizon NH takes extraordinary steps to prevent service interruptions during transfer and to reestablish service should interruptions occur;**

**\*\*Create a rapid response process similar to that developed in Maine to address issues in dispute between Verizon NH and CLECs in an expeditious manner;**

**\*\*Convert all interim number portability to permanent number portability;**

**\*\*Require employees who deal with CLECs to identify themselves using either an employee identification number or first and last name.**

## **II. Procedural History**

Verizon NH initiated NHPUC Docket No. DT 01-151 with a filing on July 31, 2001. Verizon NH's filing requested the Commission to determine if Verizon NH had established that it complies with the requirements of Section 271, based upon its Declaration. The NHPUC granted full participant status to CTC Communications Corporation (CTC), Freedom Ring Communications, L.L.C. d/b/a BayRing Communications (BayRing) and Network Plus, Inc. (Network Plus) (collectively the Joint CLECs); Sprint Communications Company, LLP; Global NAPS, Inc.; WorldCom, Inc. (WorldCom);

AT&T Communications of New England, Inc. (AT&T); AT&T Broadband Phone of New Hampshire, LLC (AT&T Broadband), the Association of Communications Enterprises (ASCENT); Granite State Telephone Company, Merrimack County Telephone Company, Wilton Telephone Company, Hollis Telephone Company, Dunbarton Telephone Company, Northland Telephone of Maine, Bretton Woods Telephone Company, and Dixville Telephone Company (collectively the ICOs); RNK, Inc.; PaeTec Communications, Inc.; Conversent, Inc.; Lightship Telecommunications, Inc.; and Dieca Communication Inc. d/b/a Covad Communications Company. The New Hampshire Office of the Consumer Advocate participated as a party pursuant to RSA 363:28.

As the inquiry was not formally a "contested case" under New Hampshire law, the NHPUC established a non-adjudicative process for the docket. The process provided a satisfactory foundation for these Consultative Comments. To facilitate the non-adjudicative review, the NHPUC employed a telecommunications consultant familiar with the New Hampshire market and NHPUC process, Mr. Paul A. Hartman. The Facilitator conducted an investigation that included both extensive discovery, technical conferences, and five days of evidentiary hearings, during which the Declarations filed by Verizon NH, CTC, Conversent, BayRing,

Network Plus, and AT&T were subject to questioning by the parties themselves and by the Facilitator. Subsequently, parties filed briefs and the NHPUC heard closing arguments on February 6, 2002, *en banc*. The NHPUC also received both written comments from the public and oral statements from members of the public at its public hearing.

On March 1, 2002, the NHPUC issued its preliminary analysis concerning Verizon NH's compliance with Section 271, which enumerated ten conditions to a favorable recommendation. Verizon NH responded on March 15, 2002, informing the NHPUC that it would agree to six of the conditions but considered the others problematic. The NHPUC found that Verizon made certain reasonable points and, by letter dated April 10, 2002, directed the parties and Staff to participate in discussions to uncover alternative methods by which the remaining NHPUC concerns could be addressed.

At the conclusion of multiple meetings, two of the four problematic issues had been resolved. The remaining two issues dealt with Verizon NH's UNE rates (in particular the overall cost of capital used to calculate the UNE rates), and the prospect of making broadband services available throughout Verizon NH's retail service area in New Hampshire.

Pursuant to NHPUC direction, on May 6, 2002, the Staff reported its recommendation for addressing the unresolved issues. On June 5, 2002, Verizon NH filed a letter containing a statement of its position regarding each of the conditions and offering to take certain actions to address the conditions in dispute. On June 14, 2002, the NHPUC issued its final analysis concerning Verizon NH's compliance with Section 271.

In addition to the procedure in DT 01-151, the NHPUC provided an open process for examining Verizon NH's proposed Carrier to Carrier (C2C) Guidelines and Performance Assurance Plan (PAP) in a separate docket, DT 01-006. The NHPUC also undertook an expedited review of Verizon NH's TELRIC pricing of UNE Remand elements in DT 01-206. Both of those dockets have been completed at this time: the NHPUC issued initial orders and orders on reconsideration in the PAP docket (Orders No. 23,940, dated March 29, 2002, and No. 23,976, dated May 24, 2002) and in the UNE Remand docket (Orders No. 23,948, dated April 12, 2002, and No. 23,993, dated June 13, 2002). On June 15, 2002, Verizon NH appealed certain of the NHPUC's decision in the UNE Remand case to the New Hampshire Supreme Court. As part of its appeal, Verizon New Hampshire is requesting a stay of portions of the orders.

### III. Applicable Law

To obtain FCC approval for entry into New Hampshire's interLATA market, Verizon must demonstrate that it meets all of the following legal tests: (1) that Verizon has entered into binding agreements with one or more competing providers, if proceeding under Section 271(c)(1)(A), or Track A; (2) that Verizon has successfully satisfied the 14 items of the competitive checklist of Section 271(c)(2)(B); (3) that Verizon will carry out, pursuant to Section 271(d)(3)(B), its interLATA authority through a separate affiliate as required by Section 272; and (4) that granting Verizon's application is consistent with the public interest, convenience, and necessity under Section 271(d)(3)(C).<sup>3</sup> Verizon has the burden of demonstrating that it is offering inter-connection and access to network elements to competitive local exchange carriers (CLECs) on a non-discriminatory basis.<sup>4</sup>

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<sup>3</sup> Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (re. June 30, 2000) SWBT Order, ¶9.

<sup>4</sup> Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (Rel. April 16, 2001) (Massachusetts Order), ¶11.

Under the first legal test, Verizon must show that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or Section 271(c)(1)(B) (Track B).<sup>5</sup> Verizon has filed its application under Track A. Therefore, Verizon must fulfill four requirements: it must demonstrate that (1) it has entered into a binding interconnection agreement with one or more CLECs that has been approved by the NHPUC; (2) the agreements specify terms and conditions under which Verizon is providing access and interconnection to its network facilities with the network facilities of one or more CLECs; (3) local telephone exchange service is being provided to residential and commercial customers by one or more unaffiliated CLECs; and (4) the service is offered either exclusively over the CLECs own facilities or "in combination with the resale of the telecommunications services of another carrier."<sup>6</sup> No party disagreed with Verizon's assertion that it has fulfilled the preconditions for application under Track A.

Once Verizon has demonstrated that it has complied with Section 271(c)(1)(A), Verizon must then meet the second legal test by demonstrating that "such access and

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<sup>5</sup> 47 U.S.C. Section 271(d)(3)(A).

<sup>6</sup> Ameritech Michigan Order, ¶¶70-72.



interconnection meets the requirements" of the 14-point competitive checklist set forth in Section 271(c)(2)(B).<sup>7</sup>

The third legal test the FCC must apply is whether Verizon NH will carry out its interLATA authority through a separate affiliate, pursuant to Section 272.

Finally, Verizon NH must satisfactorily demonstrate that granting Verizon NH's request is "consistent with the public interest, convenience, and necessity," pursuant to 47 U.S.C. Section 271(d)(3)(c). The FCC has emphasized that the public interest test goes beyond complying with the competitive checklist, and addresses this matter separately in its decisions.<sup>8</sup>

The FCC has stated that compliance with the competitive checklist provides a strong but not conclusive indication that long distance entry is consistent with the public interest.<sup>9</sup> The FCC's *SBC Kansas/Oklahoma Order* provides a discussion of the factors that are to be considered in addressing the public interest requirement.

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<sup>7</sup> 47 U.S.C. Section 271(c)(2)(A)(ii).

<sup>8</sup> Memorandum Opinion and Order, Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a South western Bell Long Distance for provision of In Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237, 273 (2001) (*SBC Kansas/Oklahoma Order*).

<sup>9</sup> *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA services in Michigan*, 12 FCC Rcd 20543 at ¶389 (1997).

[W]e view the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition.<sup>10</sup>

To assess Verizon NH's application under this standard the NHPUC analyzed the broad picture of competition in New Hampshire as presented by the entire range of issues and details encountered under the NHPUC's mandate for regulating telecommunications. The NHPUC examination of Verizon NH's proposed PAP in a separate docket, DT 01-006, comprises a portion of the public interest review, discussed in Section IV.B herein.

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<sup>10</sup> *SBC Kansas/Oklahoma Order* at ¶¶272-273.

#### **IV. Deliberations**

##### **A. Checklist and Public Interest Standard as Addressed by NHPUC Condition**

We considered the declarations, exhibits, briefs and oral arguments submitted by Verizon NH, the Office of Consumer Advocate, the Joint CLECs, AT&T, MCI, ASCENT, and other interested persons. As part of the investigation, we also considered the report of the independent accountants PricewaterhouseCoopers, LLC, which, in accordance with attestation standards established by the American Institute of Certified Public Accountants, examined and verified that the operational support systems (OSS) and performance metrics reporting are the same in New Hampshire as in Massachusetts, where they have been found to satisfy the standards for compliance with Section 271(c).

At the conclusion of our process in DT 01-151, we determined that the record showed Verizon NH has interconnection agreements, processes, and procedures necessary for a competitive market to exist in New Hampshire and satisfies the preconditions for filing under Track A, Section 271 (c) (1) (A). In addition, based on the evidence, we concluded at that time that Verizon NH had met the requirements of nine of the competitive checklist items:

- No. 3. Poles, Ducts, Conduits and Rights-of-Way:  
Section 271(c) (2) (B) (iii);
- No. 6. Local Switching:  
Section 271(c) (2) (B) (vi);
- No. 7. 911/E-911, Directory Assistance, Operator  
Services: Section 271(c) (2) (B) (vii);
- No. 8. White Pages:  
Section 271(c) (2) (B) (viii);
- No. 9. Numbering Administration:  
Section 271(c) (2) (B) (ix);
- No. 10. Call-Related Databases and Signaling:  
Section 271(c) (2) (B) (x);
- No. 12. Local Dialing Parity:  
Section 271(c) (2) (B) (xii);
- No. 13. Reciprocal Compensation:  
Section 271(c) (2) (B) (xiii);
- No. 14. Resale:  
Section 271(c) (2) (B) (xiv).

However, with regard to the remaining issues in the case, we initially concluded that several areas of concern remained about Verizon NH's full compliance with certain checklist items, its corporate commitment to serving CLEC customers, and whether Verizon NH demonstrated that its proposal would be for the public good. Therefore, in a letter dated March 1, 2002,<sup>11</sup> and by announcement in a public meeting, we notified Verizon NH that our concerns

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<sup>11</sup> Attached hereto as Appendix 3. The NHPUC March 1<sup>st</sup> Letter inadvertantly omitted item No. 13 from the list of requirements Verizon NH had satisfied. The June 14<sup>th</sup> letter (Appendix 2) correctly included item No. 13.

must be met before a favorable NHPUC recommendation could be issued to the FCC. We established ten actions that Verizon NH could implement to satisfy our concerns, in addition to complying with our decision regarding the PAP in DT 01-006.

The conditions that we established in our March 1<sup>st</sup> letter to bring the Verizon NH Section 271 petition in line with the public interest pursuant to both the TAct and New Hampshire statutes, were:

1. To convert the existing SGAT into a CLEC tariff, from which competitors may directly order anything contained in the SGAT without the need to negotiate an interconnection agreement or amend an interconnection agreement, reflecting the SGAT rates, terms and conditions;
2. To recalculate the rates in the CLEC tariff using an 8.42% overall cost of capital, based on Verizon NH's current debt to equity ratio, Verizon NH's current cost of debt and 10% return on equity as used in New Jersey; and, in addition, to reduce all rates by 6.43% to account for merger and process re-engineering savings;
3. To revise the SGAT and CLEC tariff to apply the unbundled local switching charge only once to a call that originates and terminates in the same switch;
4. To revise the SGAT and CLEC tariff to clarify that UNE-P combinations ordinarily combined by Verizon NH to serve retail customers will be provided, as they are in Massachusetts, even if the particular loop and switch port affected by the CLEC order are not currently connected and have never been connected to each other before

5. To create a CLEC-only intrastate special access tariff for DS-1 and DS-3 using UNE rates and SGAT terms and conditions, including a provision that either allows CLECs to connect a UNE to the special access or charges a *de minimis* charge for the special access until it is converted to a UNE;
6. To create a critical-need customer category (e.g. police, fire, hospital) that identifies end-user customers whose continued telephone service is essential to public health and safety so that, if the critical-need customers chooses to change local exchange carriers, Verizon NH takes extraordinary steps to prevent service interruptions during transfer and to reestablish service should interruptions occur;
7. To create a rapid response process similar to that developed in Maine to address issues in dispute between Verizon NH and CLECs in an expeditious manner;
8. To convert all interim number portability to permanent number portability;
9. To refund or recalculate disputed DC power bills to CLECs that were rated using the intrastate SGAT rate that was in effect by operation of law prior to the NHPUC's Order 23,915; and
10. To require employees who deal with CLECs to identify themselves using either an employee identification number or first and last name.

In response to our decision, Verizon NH agreed, by letter dated March 15, 2002, to implement six of the actions but objected to four.<sup>12</sup> We therefore sought comment from Staff and the parties to the docket regarding those conditions in controversy: items 2,3,5, and 9 above.

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<sup>12</sup> Attached hereto as Appendix 4.

Upon review of all comments, and noting that Verizon NH had raised several reasonable points, we directed the parties to work together to develop any clarifications, modifications or substitutions that could meet our concerns satisfactorily. At our direction, on May 6, 2002, Staff reported the outcome of the working sessions, which was that no solution was reached that would be acceptable both to CLECs and to Verizon NH. Staff also provided its recommendations as to the disputed conditions. Subsequently, on June 5, 2002, Verizon NH submitted a letter offering alternative methods of addressing the disputed conditions.<sup>13</sup>

We issued our conclusions regarding the conditions in controversy by public deliberations on June 11, 2002, and by letter to Verizon NH dated June 14, 2002.<sup>14</sup> We eliminated conditions #3 and #9, convinced that, with regard to #3, Verizon NH did not double-recover its costs for the specific unbundled switching charge, and, with regard to #9, that NHPUC Docket No. DT 00-072 would address the DC power charge issue adequately.

With respect to condition #2, we found that Verizon NH's proposal to lower its rural loop rate, switching

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<sup>13</sup> Attached hereto as Appendix 1.

<sup>14</sup> Attached hereto as Appendix 2.

rates, DS-1 loop rates and Daily Usage Feed (DUF) rates, coupled with our initiation of a docket to set a new cost of capital that will apply to all UNE rates, would satisfy our concern. We therefore have accepted Verizon NH's proposed reductions and we opened Docket No. DT 02-110 to address the cost of capital issue.

Hence, Verizon NH agrees it will:

1. reduce rates for zone 3 (rural) 2 wire analog loops from \$34.87 to \$25 and the zone 3 rural 4-wire analog loop rate to \$50;
2. reduce switching and transport rates by approximately 18%;
3. reduce UNE DS1 loop rates by 20%;
4. reduce UNE DUF rates as follows:

\*\*Record charge reduced to \$0.001197

\*\*Transmission charge reduced to \$0.000022

\*\*Per Tape/cartridge reduced to \$14.36

With respect to condition #5, having to do with our concern for the rural areas of the state that have few or no options for high speed internet service, we found that Verizon NH's proposed alternative approach was adequate. Instead of creating a CLEC-only intrastate special access tariff for DS-1 and DS-3, Verizon NH will conduct a trial



offering of tariffed ISDN BRI service in at least six exchanges, at flat rates of \$30 per month for residential service and \$50 per month for business service. The offering will be available to customers with up to six lines in exchanges selected by Staff, located in predominantly rural areas.

The trial offering will be evaluated by the NHPUC as to its success or failure. If the trial is determined to have failed, customers participating in the trial may continue to receive the service for a period extending to a date 36 months from the beginning of the trial. Furthermore, in order to address the underlying concern to expand broadband availability in New Hampshire, in addition to the trial ISDN BRI offering, we have opened Docket No. DT 02-111 to examine Verizon New Hampshire's current T-1 tariff.

While we have no doubt that New Hampshire ratepayers and the competitive status of telecommunications in New Hampshire would have benefited had Verizon NH been willing to accept our conditions as initially set forth, the modified conditions are consistent with our overall position. The conditions accepted by Verizon NH for implementation in New Hampshire address the concerns we raised regarding Verizon NH's Section 271 application in

terms of meeting the public interest standard. Moreover, with the additional conditions, we find that each of the 14 checklist items has been met.

**B. Public Interest Standard as Addressed by the PAP**

Verizon NH proposed to the NHPUC, in Docket No. DT 01-006, a self-executing wholesale service performance assurance plan (PAP) modeled on the performance enforcement mechanisms approved by the New York and Massachusetts public utilities commissions. Such a plan has been held by the FCC to be convincing evidence that the regional BOCs will continue provisioning high quality service to CLECs after it obtains Section 271 authority, an important element of the public interest standard.

We reviewed three different enforcement plans in DT 01-006,<sup>15</sup> Verizon NH's, AT&T's and Staff's. Our review was informed by the underlying truth that every plan for statistically measuring Verizon NH's wholesale performance is merely a surrogate: a statistical assessment of competition that substitutes observations of Verizon NH's business processes for actual observations of the impact on competitors and competition. During the course of the proceeding, Verizon NH had challenged the NHPUC's authority

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<sup>15</sup> The complete texts of our order and our order on reconsideration in DT 01-006 are attached as Appendices 5 and 6, respectively.

to make any significant changes to its proposal that would expand Verizon NH's risk of or amount of penalties. Our review determined that Verizon NH's PAP is an acceptable backsliding plan in the context of New Hampshire state law and authority, when modified to incorporate certain evolutionary adjustments.

In NHPUC Order No. 23,940 (March 29, 2002), at pp. 62-66 and 80-84, we concluded that our statutory authority to enforce payment of reparations and penalties to CLECs for substandard wholesale service is limited in such a way as to permit only the approval of a voluntary, self-executing plan. Although our state statutory scheme precludes us from requiring Verizon NH to make substantive changes to its proposal, we are authorized to order penalties for violations of law, our own rules and orders.

In view of the limitations of our authority to order significant changes to Verizon NH's proposed PAP, and in view of prior decisions by the FCC accepting similar PAPs, we accepted the Verizon NH PAP as sufficient to meet the requirement under Section 271. Pursuant to Orders No. 23,940 and No. 23,976 in DT 01-006, our Staff has been directed to undertake an analysis of reported Verizon service quality data. We assure the FCC that the exercise of our traditional statutory authority in conjunction with

the Verizon NH PAP will best serve the public interest in New Hampshire.

**V. Conclusion**

For the reasons set forth above, and subject to the conditions discussed herein, the NHPUC finds that Verizon NH has met the requirements of the Section 271 Competitive Checklist and that approval of its application for entry into the New Hampshire interLATA market would be in the public interest.

Respectfully submitted,

NEW HAMPSHIRE PUBLIC  
UTILITIES COMMISSION

By: \_\_\_\_\_  
Thomas B. Getz, Chairman

By: \_\_\_\_\_  
Susan S. Geiger, Commissioner

By: \_\_\_\_\_  
Nancy Brockway, Commissioner

CERTIFICATE OF SERVICE

I, E. Barclay Jackson, Esquire, do hereby certify that on this 17<sup>th</sup> day of July, 2002, copies of Consultative Comments of the New Hampshire Public Utilities Commission with regard to the Application by Verizon New England, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware, WC Docket No. 02-157, were provided to the parties of record.

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E. Barclay Jackson, Esquire